

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

AMERICAN BANK OF MONTANA,)	DOCKET NOS.: PT-2011-7
)	and PT-2011-15
Appellant,)	
)	FACTUAL BACKGROUND,
-vs-)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
THE DEPARTMENT OF REVENUE)	FOR JUDICIAL REVIEW
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

This appeal was brought by Taxpayer American Bank from decisions of the Gallatin County Tax Appeal Board (Gallatin CTAB) and the Flathead County Tax Appeal Board (Flathead CTAB). On appeal, the Taxpayer was represented by Michael Green, Attorney, and the Department of Revenue was represented by Michele Crepeau and Amanda Myers, tax counsel. The parties agreed to consolidate the appeals and to submit them to this Board for a ruling on the records created at the county tax boards and additional briefing.

Issue Presented

The issue is whether the county tax appeal boards correctly refused to reduce the values of Taxpayer's property in the middle of the appraisal cycle set by the Legislature.

Statement of the Case

1. The Legislature created a complex valuation system for property tax in Montana. As part of that system, all residential and commercial property is valued at

current fair market value every six years, as of a date certain. The statutory framework is set out in §15-7-111, MCA *et seq.* The taxable value (based on a formula applied to market value), set as of July 1, 2008, is phased-in over the subsequent six year period at the rate of 16.66% per year. (Section 15-7-111(3), MCA.) Thus, each residential property receives only a single valuation in a six year cycle.

2. For the taxable years from January 1, 2009 through December 31, 2014, the Department of Revenue appraised all class four properties at market value as of July 1, 2008. (ARM 42.18.124 (1) (b).) Class four property generally includes residential and commercial property, including the property at issue in this matter. *See* §15-6-134, MCA.

3. In Montana, “all taxable property must be assessed at 100% of market value....” (Section 15-8-111, MCA.) Further, the “same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.” (Section 15-7-112, MCA.)

4. American Bank requests that this Board determine that §15-7-111, MCA, is unconstitutional as applied to American Bank’s property in Columbia Falls and Bozeman. In the alternative, American Bank requests that the Board determine that the statute violates Montana’s equalization statutes.

5. American Bank argued that their valuation was so disparate from the valuations in other areas of Montana that a mid-cycle adjustment is required. They requested that the Gallatin and Flathead CTABs find §15-7-111, MCA, unconstitutional and adopt the values in American Bank’s appraisals as a mid-cycle adjustment, effective January 1, 2011. (Gallatin CTAB, Flathead CTAB)

6. American Bank owns 30 lots of unimproved land in the Tamarack Heights Subdivision in Columbia Falls, MT (Flathead County). (Appeal Form.)
7. The Department of Revenue valued the properties as of July 1, 2008 ranging from approximately \$121,000 to \$219,000 based on the size of each lot. (Exh. E.)
8. American Bank commissioned a fee appraisal which concluded that the average sales price of these residential lots has declined approximately 44 percent from 2009 to 2010. (Exh. A, p. 25, Flathead CTAB hearing.)
9. The fee appraisal was performed by William Frazier, MT Certified General Appraiser, with values set as of October 22, 2010. (Exh. A, p. 2, Flathead CTAB hearing.)
10. American Bank also owns 74 lots in the Valley West Subdivision in Bozeman, MT (Gallatin County.)
11. The Department of Revenue valued those lots as of July 1, 2008 ranging from approximately \$72,000 to \$190,000 based on the size of the lots. (Attachment to the appeal form.)
12. American Bank commissioned a fee appraisal for this area which showed the average sale price of residential lots in Bozeman have declined approximately 40 percent, with values in the Valley West Subdivision declining over 58 percent since the Department's valuation date. (Exh. 1, pg. 54, Gallatin CTAB hearing.)
13. The fee appraisal was performed by Keith Reilly, MAI and GCA, with values set as of September 24, 2010. (Exh. 1, Gallatin CTAB hearing.)
14. American Bank filed an appeal with the Gallatin County Tax Appeal Board and the Flathead County Tax Appeal Board, requesting a mid-cycle valuation adjustment as set out in the relevant appraisals. (Appeal forms.)
15. In both county tax hearings, the Taxpayer submitted a study commissioned by the Montana Department of Revenue by Almy, Gloudemans, Jacobs & Denne ("Gloudemans") on January 10, 2011 examining the decline in property values across

the state following the valuation in July, 2008 up to June, 2010. (Exh. 2, Gallatin CTAB; Exh. B, Flathead CTAB.)

16. The Gloudemans report uses a series of market price trends and sales ratio studies to monitor assessment levels and related performance measures subsequent to the 2009 tax class. (Exh. 2, p. 1, Gallatin CTAB; Exh. B, p. 1, Flathead CTAB.)

17. That report identifies the decline in the area including Gallatin County as about a 22 percent decline, one of the highest in the state. The area including Flathead has an almost 9 percent decline, while “(t)he average property owner in the State has thus seen a modest decline of -2 percent to -3 percent since the market peaked in the summer of 2007.” (Exh. 2, Almy, Gloudemans *et al*, p.10.)

18. American Bank argued that their valuation was so disparate from the valuations in other areas of Montana that a mid-cycle adjustment is required. They requested that the Gallatin and Flathead CTABs find §15-7-111, MCA, unconstitutional and adopt the values in American Bank’s appraisals as a mid-cycle adjustment, effective January 1, 2011. (Gallatin CTAB, Flathead CTAB)

19. Both Gallatin CTAB and Flathead CTAB denied American Bank’s appeals. (CTAB appeal Forms.)

20. American Bank timely appealed, and the cases were consolidated, without opposition by the parties, for hearing before this Board.

21. American Bank asks this Board to reverse the CTAB decisions and find that §15-7-11, MCA, is unconstitutional as applied to American Bank properties, or in the alternative, that the statute violates statutory equalization mandates.

Findings of Fact, Conclusions of Law and Discussion

The State Tax Appeal Board has jurisdiction over this matter. Section 15-2-301, MCA. This Board is the finder of fact and may make an initial review of the

Constitutional question, though we do so with great caution. The Montana Supreme Court has said that the founding purpose of state administrative agencies was due, in part, to place the initial decision-making into the hands of those who are most knowledgeable and qualified in the field to make those decisions. *Great Falls Tribune v. Montana Public Service Commission*, 2003 MT 359, ¶43, 319 Mont. 38, 82 P.3d 876 (supporting an administrative agency in its initial factual determination and review of a Constitutional question.)

Taxpayer claims that the six year appraisal cycle system imposes a disparately heavy tax burden on this Taxpayer because property values in Bozeman and the Flathead, and specifically the properties at issue, have fallen more than most other parts of the state, and thus current taxation of the properties violates the equal protection requirements of the Montana and Federal Constitutions. The Taxpayer urges this Board to find in favor of the Taxpayer's position based on the Montana Supreme Court's holding in *Roosevelt v. Department of Revenue*, 1999 MT 30, 293 Mont. 240, 975 P.2d 295.

This Board has previously determined, in *DOR v. Covenant Investments*, PT 2009-113 and 116, the Montana statutes do not allow for a mid-cycle adjustment in value. Rather, Montana statutes require all property to be valued on the same date in order to produce uniform assessments across the state. *See, e.g.*, 15-7-112, MCA. *See also* Rule 42.18.124(b), ARM. In *Covenant*, this Board determined that under current law, property must be valued for tax purposes on July 1, 2008, and that insufficient evidence and argument were presented to find the statutes unconstitutional as applied.

American Bank requests that this Board review its Constitutional claim, and determine that its equal protection rights will be violated if a mid-cycle adjustment is not implemented.

Equal Protection

Both the Montana and United States Constitutions require that no person be denied equal protection of the law. The Montana Supreme Court has drawn no distinction between the protections offered by the equal protection clauses of either Constitution. *Dep't of Revenue v. PPL Montana, LLC*, 2007 MT 310, ¶ 29, 340 Mont. 124, 172 P.3d 1241. “Equal protection of the law is guaranteed by Article II, Section 4 of the Montana Constitution. The rule of equal protection is that persons similarly situated should receive like treatment.” *Blehm v. St. John's Lutheran Hosp.*, 2010 MT 258, ¶ 23, 358 Mont. 300, 246 P.3d 1024 (internal citations omitted). The Montana Supreme Court has identified a three-step analysis of equal protection violations. “Resolution of an equal protection challenge to a statute is determined by identifying the classes of persons involved; by determining the appropriate level of scrutiny; and applying the appropriate level of scrutiny to the situation involved.” *Id.* For tax equalization issues, the appropriate level of scrutiny is the rational basis test. *Kottel v. State*, 2002 MT 278, ¶ 52, 312 Mont. 387, 60 P.3d 403. “Under the rational basis test, the law or policy must be rationally related to a legitimate government interest.” *Snetsinger v. Montana University System*, 2004 MT 390, ¶ 19, 325 Mont. 148, 104 P.3d 445 (internal citations omitted).

In reviewing Legislative policy, however, statutes are presumed to be constitutional and it is the duty of the Court to avoid an unconstitutional interpretation if possible. *Montanans for the Responsible Use of the Sch. Trust v. Mont. ex rel. Bd. of Land Comm'r*, 1999 MT 263, ¶ 1, 296 Mont. 402, 989 P.2d 800.

The Taxpayer argues that, as of January 1, 2010, the subject properties are overvalued in comparison to other properties in the state, which leads to the Taxpayer being part of a class of people facing discrimination due to a discriminatory tax system.

To review, the current tax system values residential and commercial property once every six years, and that value is then “phased-in” over the next six years to set a specific tax due each year. The phase-in process is set by statute, and the Department of Revenue is directed to separately value each residential and commercial property as of the same date. The market value set, if higher than the last cycle, is then implemented with a phase-in of 16.66% over the next six year period, with an according reduction in tax rate. This system is designed to mitigate large tax increases in the first year of an appraisal cycle. Over the years, the Montana Supreme Court has repeatedly addressed the validity of the Legislature’s differing approaches to setting appraisal procedures. *See generally Patterson v. MT DOR*, 171 Mont. 168, 557 P.2d 798; *MT. DOR v. Barron*, 245 Mont. 100, 799 P.2d 533; *Roosevelt v. MT DOR*, 1999 MT 30, 293 Mont. 240, 975 P.2d 295; *Larson v. MT DOR*, 166 Mont. 449, 534 P.2d 854; *MT DOR v. St. Tax Appeal Bd.*, 188 Mont. 244, 613 P.2d 691; *DeVoe v. MT DOR*, 233 Mont. 190, 759 P.2d 991.

The Taxpayer has specifically argued that under the holding in *Roosevelt*, the current statutory system is unconstitutional as applied. In *Roosevelt*, Roosevelt’s property in Fergus County, when valued during a routine six year appraisal, had declined in value since the last assessment. Instead of immediately assessing on the new lower value, the Department phased-in the declining value (as of the appraisal date) over the reappraisal cycle. *Id* at 297. Roosevelt argued that he would be over-valued for five years if the decline in value was phased in, because he would be subject to a higher market valuation than set by appraisal as of the taxing date. The court in *Roosevelt* agreed with the taxpayer, and stated that it was unconstitutional to require certain taxpayers to bear a disproportionate share of Montana’s tax burden in violation of the Equal Protection requirements of the Fourteenth Amendment of the United States Constitution, and Art. II, § 4, 1972 Montana Constitution, and the Due Process requirements of the Fifth and Fourteenth Amendments of the United States

Constitution and Art. II, §§ 17 and 29 of the 1972 Montana Constitution. The failure to immediately implement the lower valuation also violated the appraisal provisions of Montana statutes which require general and uniform appraisal, assessment and equalization of all taxable property in this state. *Roosevelt*, citing to *Barron*, 245 Mont. at 108-11, 799 P.2d at 538-40.

We have examined the facts in the present case, and reviewed the holding of *Roosevelt*. We first note there is a fundamental difference between the taxpayer in *Roosevelt* and the Taxpayer in the current appeal. The holding in *Roosevelt* is specific to taxpayers with declines from the valuation date of the past reappraisal cycle to the valuation date of the current appraisal. *Roosevelt*, ¶50. In *Roosevelt*, the differing market valuations for the prior cycle and the implementing cycle were set by the DOR as of the statutory appraisal dates. The issue in *Roosevelt* was whether it was an equal protection violation to phase-in the decline in value so that the property was knowingly overvalued during phase-in. In the current instance, however, the Taxpayer requests that this Board review the valuation of the subject properties as of the date of Taxpayer's choosing, and grant the Taxpayer the right to an interim reappraisal. This is fundamentally different than the issue in *Roosevelt*.

The difference in the dates in *Roosevelt* versus the current appeal is a critical distinction. The Taxpayer does not challenge the valuation of the subject properties *as of the valuation date*. Thus, we find there is no indication that the Taxpayer in this case was, at any time during the appraisal cycle, paying a disproportionate amount of tax in comparison to the valuation of other properties *as of the valuation date*. It is that valuation date that also sets the tax calculation during the subsequent six year phase-in.

As a general rule, the U.S. Supreme Court has noted "legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their

laws result in some inequality." (*McGowan v. Maryland*, 366 U.S. 420, 425-426, 6 L. Ed. 2d 393, 81 S. Ct. 1101 (1961).)

In this instance, the legislature has directed that properties shall be appraised every six years. In a six year period, there can be no doubt that some property will both appreciate and depreciate in value. The Montana Supreme Court has, however, stated that "temporal disparities within the cycle between individual property values within a county and between counties are inevitable." *Patterson*, 171 Mont at 176 (overturned on other grounds by *Barron*). See also Anno. 76 A.L.R.2d 1077 and discussion in *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350.

Because real property valuation is in constant flux, such an inconsistency will exist, to some degree, whether the reappraisal cycle is two months, a year, or six years in length. By its very nature, market value of real property shifts with time. It strains the imagination that the Taxpayer would petition for an interim assessment to increase the taxable value when the properties' market values are appreciating.

The Montana Supreme Court has required "seasonable attainment," rather than an exact market valuation at all times. *Roosevelt*, ¶45 citing *Allegheny*, 488 U.S. at 343, 109 S. Ct. at 638, 102 L. Ed. 2d at 697 (citations omitted). The Supreme Court in *Patterson* (overruled on other grounds) determined that a five year cycle was not an excessive period of time for temporal valuation disparities. The District Court in its *Roosevelt* decision (subsequently reviewed by the Montana Supreme Court) determined that 50 years was too long for a temporal disparity in valuation (when reviewing phase-in of a declining value.)

While six years between property valuations most certainly will create changes in market value of properties, this Board cannot conclude that it is a period with inherent constitutional infirmities. As the U.S. Supreme Court stated in *Nordlinger v. Hahn*, (upholding acquisition value taxation) 505 U.S. 1, 17-18, 112 S.Ct 2326, "Time and again, however, this Court has made clear in the rational-basis context that the

Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted" *Nordlinger v. Hahn*, 505 U.S. 1, 17-18, 112 S.Ct 2326, citing to *Vance v. Bradley*, 440 U.S. 93, 97, 59 L. Ed. 2d 171, 99 S. Ct. 939 (1979). While it may be that a six year time frame provides inconsistent interim values, we cannot conclude that it is outside the purview of the Legislature to allow for such an extended time between appraisals. An "abundance of authority finds no constitutional or statutory mandates in the temporary inequalities which accompany a cyclical plan of reappraisal." *Larson, supra*, at 455.

There are several reasons why a six year period may be preferred by the Legislature, any of which may satisfy the rational basis test. A lengthy reappraisal period, such as six years, allows for a predictable and consistent tax base for local and state jurisdictions' budgeting processes, which provides sufficient rational basis for such a determination. Further, it is in the purview of the Legislature to determine that a six year cycle is appropriate due to planning for costs of the Department of Revenue in implementing its appraisal cycle. While we need not support the Legislative policy decision to have a lengthy six year reappraisal cycle, we find no evidence or law mandating this Board to conclude such a decision of the Legislature violates equal protection under the law.

There is a rational basis for the Legislature to provide a date certain for valuation of property for tax purposes. We do not find any logical or legal reason that the Taxpayer can request or advocate for valuation as of a date of Taxpayer's choosing, and thus we find no Constitutional equal protection violation.

Equalization

The Taxpayer also argues that the equalization statutes require a mid-cycle adjustment. Art. VIII, Section 4 of the Montana Constitution requires equalization of property by directing that “all taxing jurisdictions shall use the assessed value of property established by the state.” The Legislature implemented §15-7-112, MCA, requiring the “same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program.”

The Taxpayer has brought evidence relating to a mid-cycle valuation for Taxpayer’s properties. First, there is no indication that the Department failed to comply with the requirements of the equalization requirements in statute or the Constitution stated in the prior paragraph. Further, the Taxpayer fails to bring sufficient valuation information for this Board to determine whether other comparable properties with similar true market values do not have substantially equal taxable values at the end of each cyclical revaluation cycle, as required by §15-7-112, MCA. The only evidence of value at the end of a cyclical revaluation is the DOR’s valuation of the subject properties as of July 2008. No evidence was presented to demonstrate that value to be incorrect or in violation of the statutory requirements.

There is no legal or evidentiary indication that the Taxpayer’s properties are differently situated than some or all properties in Gallatin and Flathead Counties. Further, we cannot determine what type of taxpayers might face similar discriminatory values, if discrimination existed, because the DOR does not calculate interim values. Such taxpayers might be those in Gallatin or Flathead, or in other counties with

similar downward valuation, or properties such as large tracts of subdivided vacant land. DOR has not valued all the properties in the areas pinpointed by the GlouDEMANS study as having greater value loss than the rest of the state. Even if it were to review a portion of the properties, it appears that equalization would require comparative equality between all parcels of real property. Thus, a full reappraisal would be required to determine true equity amongst land parcels, a time-consuming and expensive task requiring legislative or judicial authorization.

If this Board (or a reviewing court) were to find a Constitutional infirmity with the current system or as applied to the Taxpayer, we see that the only appropriate remedy is reappraisal of all properties subject to appraisal, not merely the subject property. The inconsistencies of property valuation are too great to determine that it would be proper to make a valuation change for a single set of properties, such as the Taxpayer's, as of a date of Taxpayer's choosing. These American Bank properties cannot be distinguished from other properties in same area and similar economic situation, and the evidence is insufficient to make a determination as to these properties in relation to others as required in *DOR v. STAB, supra* (listing five specific requirements for courts to consider when comparing market value for equalization.) This claim is therefore denied.

Summary

We find the evidence is not persuasive to determine that the Taxpayer has suffered an injury which rises to a Constitutional violation. We find that the Taxpayer's evidence and argument presented is insufficient to overturn the statutory scheme.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject properties' values shall be entered on the tax rolls of Gallatin County and Flathead County at the value set by the Department of Revenue.

DATED this 11th day of June, 2012.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman


SAMANTHA SANCHEZ, Member

(SEAL)

Notice: You are entitled to judicial review of this Order in accordance with Section 15- 2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of June, 2012, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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